IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16915 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMKRISHNA GOL FARM - Petitioner(s)

Versus

GUJARAT ELECTRICITY BOARD & 1 - Respondent(s)

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Appearance :

MR BHARAT T RAO for Petitioner(s) : 1,
MR RC JANI for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/01/2006

ORAL JUDGMENT

1. Rule. Shri R.C.Jani, learned advocate waives service of rule on behalf of the respondent. With the consent of the learned advocates for the parties, the

matter is heard finally today.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner – consumer has challenged the legality and validity of the order passed by the Appellate Committee of the G.E.B. dated 18.10.2004 passed in Appeal No.B-190 / 2004 which came to be confirmed by the Appellate Committee vide its judgment and order dated 14.2.2003 which came to issued pursuant to the checking took place on 14.2.2003 which came to confirmed by the appellate committee vide its judgment and order dated 18.10.2004.

3. The petitioner is Consumer of the respondent being No.06464 / 007/15/9/ LTP-1 with contract load of 80 HP. The factory of the petitioner was checked by the Dy.Engineer, Sayan on 14.2.2003 and during that checking the total connected load was checked and it was found to be at 171.75 HP. It was also found that the MMB Glass was fond broken and the meter was also found burnt. The meter body glass was

also found open up and stickers seals were found torn. The old meter was removed and a new meter was fitted and the same was sent to the laboratory for further inspection and after considering the same treating it as the case of theft and considering the fact that the petitioner has committed malpractice of additional extra unauthorised load of 91.75 HP, the special supplementary bill came to be issued to the petitioner for an amount of Rs.5,42,218.88 ps and his connection was disconnected on 14.2.2003. On deposit of Rs.1,35,555/- the electricity connection was reconnected and the petitioner preferred an appeal before the appellate committee of Gujarat Electricity Board. The Appellate Committee of GEB after giving an opportunity to the petitioner and considering the evidence on record dismissed the appeal confirming the supplementary bill issued by the respondent. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present special civil application under Article 226 of the Constitution of India.

4. Shri B.T.Rao, learned advocate appearing on behalf of the petitioner has submitted that in fact, there was no unauthorized use of extra load of 91.75 HP by the petitioner and the petitioner has not committed any malpractice of additional extra unauthorised load as alleged. Relying on the Commercial Circular No.754 issued by the G.E.B., Shri Rao has submitted that that the standby machines ought not to have been taken into consideration which were kept for emergency purpose, while considering the connected load as 171.75 HP. However, the GEB has considered the standby machines also and therefore, Shri Rao has further submitted that the appellate committee has not considered this aspect. He has also further submitted that if the standby machines had not been considered, in that case, the allegation of using 91.75 HP more as an additional extra unauthorised load would not be there. It is also further submitted by him that the contention on behalf of the petitioner that the petitioner is the unit which is working in season has also not been properly considered and therefore, it is requested to

allow the present special civil application.

5. This petition is opposed by Shri R.C.Jani, learned advocate appearing on behalf of the respondent Gujarat Electricity Board and affidavit-in-reply is also filed on behalf of the respondents. He has submitted that on appreciation of evidence and even considering the fact that the petitioner has not produced any documentary evidence to prove that the unit is seasonally working unit, the appellate committee has dealt with the same and has negatived and / or not accepted the contention on behalf of the petitioner that the unit of the petitioner is seasonally working unit. He has also further submitted that so far as connected load is concerned, those machines and / or motors were not standby but they were connected and therefore, the benefit of said circular is rightly not given by the G.E.B. as well as the the Appellate Committee. He has also further submitted that so far the particulars which are mentioned in the checking sheet with regard to the connected load found at 171.75 HP has not been

disputed and / or objected to by the petitioner and the petitioner has signed the checking sheet without raising any objection and therefore, it is requested to dismiss the present Special Civil Application.

6. Heard the learned advocates appearing on behalf of the parties.

7. It is required to be noted that the contracted load of the petitioner is 80 HP. At the time of inspection which took place on 14.2.2003 by the checking squad, the connected load was found at 171.75 HP. The necessary checking sheet was prepared and the petitioner and the representative of the petitioner had also signed the same without raising any objection. Therefore, it is not open for the petitioner to raise any objection now. So far as the contention on behalf of the petitioner with regard to not considering the various circulars with regard to standby machines, it is required to be noted that the same has been considered and dealt with by the appellate committee and it is specifically observed that the motors were found installed in the plant and

that they were not kept in the store as stand-by motors. Therefore, it cannot be said that the appellate committee has not considered the same at all. Considering the fact that in the checking sheet connected load was found to be 171.75 HP and the same was mentioned in the checking sheet and even checking was done in the presence of the representative of the petitioner who had signed the checking report without any object and considering the fact that the motors were installed in the plant and not kept in the store and considering the same and on appreciation of evidence, the appellate committee has dismissed the appeal, it cannot be said that the same is in any way illegal and / or contrary to the evidence on record. So far as the submission of the petitioner with regard to unit being seasonal running unit and not considering the same is concerned, it is required to be noted that the appellate committee has also dealt with the said argument and has considered that the petitioner has not produced any document by which it is proved that the unit is declared as seasonal one. The appellate committee has also considered that a declaration has to be approved by the concerned

Executive Engineer of the particular Division and since, there was no such declaration, contention of the petitioner has not been accepted and appeal has been dismissed and the supplementary bill has been confirmed. It is required to be noted that while exercising the powers under Article 226 of the Constitution of India, this Court is not sitting as an appellate authority exercising the appellate jurisdiction and this Court is not required to re-appreciate the evidence on record. The order passed by the appellate committee is based upon appreciation of evidence and documentary evidence and considering all the submissions made on behalf of the petitioner, no interference of this Court is warranted exercising the powers under Article 226 of the Constitution of India.

8. For the reasons stated above, the petition fails and the same is required to be dismissed and is accordingly dismissed.

9. Rule is discharged, however, there shall be no order as to costs.

[M.R.Shah, J.]

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